**YOONG FOOK WENG & ANOR**

**v.**

**LEE KAM SIN**

COURT OF APPEAL, KUALA LUMPUR
MOKHTAR SIDIN JCA
ABDUL HAMID MOHAMAD JCA
ALAUDDIN SHERIFF JCA
[CIVIL APPEAL NO: A02-305-96]
31 OCTOBER 2001

***LAND LAW:*** *Ownership - Beneficial ownership in dispute - Claim by appellant that respondent obtained title by fraud - Whether proven*

This was an appeal by the appellants, who were the executors and trustees of the plaintiff, against the decision of the learned trial judge dismissing the plaintiff's claim of beneficial ownership of a certain lot of land ('the said land') and allowing the respondent's counterclaim for vacant possession of the said land. The plaintiff had alleged that the respondent had fraudulently secured the temporary occupation license and final title for himself.

**Held:**
**Per Abdul Hamid Mohamad JCA**

**[1]** The learned trial judge had considered the evidence very carefully and, applying the correct burden of proof, had come to the conclusion that there was no element of fraud established beyond reasonable doubt in the registration of the said land in the respondent's name. Furthermore, since the relevant authority had decided to issue the title to the respondent, it was not right for the court to direct that the land be transferred to another person. (p 67 a & f)

*[Appeal dismissed.]*

*[**Bahasa Malaysia** Translation Of Headnotes]*

Ini adalah satu rayuan oleh perayu-perayu, yang merupakan wasi-wasi dan pemegang-pemegang amanah plaintif, terhadap keputusan hakim yang bijaksana yang menolak tuntutan hak keempunyaan benefisial sebidang lot tanah yang tertentu ('tanah tersebut') oleh plaintif dan membenarkan tuntutan balas responden untuk milikan kosong tanah tersebut. Plaintif telah mendakwa bahawa responden telah secara fraud memperolehi lesen penghunian sementara dan hakmilik muktamad bagi dirinya sendiri.

**Diputuskan:**
**Oleh Abdul Hamid Mohamad HMR**

**[1]** Hakim yang bijaksana telah mempertimbangkan keterangan tersebut dengan penuh teliti dan, menggunakan beban membukti yang betul, telah mencapai kesimpulan bahawa tidak terdapat unsur fraud yang ditentukan di luar keraguan yang wajar dalam pendaftaran tanah tersebut atas nama responden. Lagi pun, oleh kerana pihak berkuasa yang relevan telah membuat keputusan untuk mengeluarkan hakmilik kepada responden, ianya adalah tidak betul untuk mahkamah mengarahkan supaya tanah tersebut dipindahkan kepada seorang yang lain.

*[Rayuan ditolak.]*

*For the appellant - M/s Bachan & Kartar*
*For the respondent - M/s Arthur Yeong & Assoc*

*[Appeal from High Court, Ipoh; Civil Suit No: 22-64-94]*

*Reported by Suresh Nathan*

**JUDGMENT**

**Abdul Hamid Mohamad JCA:**
The present appellants are the executors and trustees of the Ong Ah Moo, the plaintiff in the High Court who had died before this appeal was heard. However, in this judgment, we shall refer to the present appellants and the plaintiff simply as "the appellants" except that where the context otherwise requires, Ong Ah Moo will be referred to as "the plaintiff."

The plaintiff claimed against the respondent for:

(a) a declaration that the land held under H.S.(D) Ka 11713 Pt. 38920, Mukim Hulu Kinta, Daerah Kinta ("the said land") is the "beneficial property" of the plaintiff.

(b) a declaration that respondent holds the said land and all the interests thereon upon trust for the plaintiff;

(c) an order restraining the respondent from dealing in any manner whatsoever with any of the interests of the said land.

(d) an order that the respondent do transfer the said land to the plaintiff free of all encumbrances.

(e) Alternative to (d), an order that the senior assistant registrar do execute a good and registrable memorandum of transfer of the said land to the plaintiff;

(f) damages.

(g) interests.

(h) costs.

The respondent counterclaimed, in brief, for vacant possession of the said land, mesne profit and damages.

The learned trial judge dismissed the plaintiff's claim and allowed the respondent's counterclaim for vacant possession.

We dismissed the appellants' appeal.

The cause of action was based on alleged fraud on the part of the respondent. Indeed that was the only issue before the learned trial judge.

The learned judge narrated the evidence of both parties at great length and concluded:

> To my mind from the evidence adduced, there is hardly any evidence established beyond reasonable doubt that there is an element of fraud, in the registration of the said land in the defendant's (respondent's) name.

As that is a finding of facts by the learned trial judge which we find no reason to disturb, we do not think that it is necessary for us to narrate and discuss the evidence at length as the learned trial judge has rightly done. We will only reproduce sufficient facts to enable this judgment to be understood.

According to the plaintiff he was the sole proprietor of Hin Lee Chan Mee Hoon Factory erected on Lot 10393, Cross Road Menglembu, Ipoh. He held the Temporary Occupation License (T.O.L.) for the lot until 1979. His property was situated on the said lot.

However, it should be pointed out that the appellants only produced the T.O.L. for 1975, 1976 and 1977. Furthermore those three licenses show that there were two joint-holders of the T.O.L, namely one Lim Chin Hui and the plaintiff. No T.O.L. was issued for 1978. The T.O.L. for 1979 was issued in the name of the respondent. The T.O.L. continued to be issued in the name of the respondent until 1991.

On 29 March 1991 final title to the said land was issued in the name of the respondent.

The plaintiff alleged that the respondent had fraudulently secured the T.O.L. and the final title for himself.

As we have said, the learned trial judge had considered the evidence very carefully and, applying the correct burden of proof, had come to the conclusion that he did. We find no reason not to agree with his conclusion.

Before us, learned counsel for the appellants had also argued on another ground ie, estoppel, referring to some letters written by the respondent to the Director of Lands and Mines. This ground was not pleaded. We are of the view that the appellants should not be allowed to rely on this ground. As this is trite law, we do not think that it is necessary for us to refer to authorities on this point. In any event those letters were considered by the learned trial judge in coming to his decision and, in spite of that, he still found in favour of the respondent.

It was also argued by the learned counsel for the respondent before us that the subject matter of the claim was not clearly identified. True that at various times "lot" was confused with "Plot", and the lot number (which was also used as the "address") differs, but from the pleadings and the evidence, oral and documentary, it is clear that the parties were talking about the same Plot ie, Plot 16 and later named Plot l6A. We are not with the learned counsel for the respondent on this point.

Another point worth mentioning is this. The fact that the title was issued to the respondent shows that the application was made by him in his name. Is there any guarantee that had the plaintiff applied for the title in his name, the title would have been issued to him? It might or might not be issued to him or to anybody. The relevant authority had decided to issue the title to the respondent. We do not think that it is right for the court to direct that the land be transferred to another person.

In the circumstances, we dismissed the appeal with costs. Deposit to be paid to the respondent on account of taxed costs.